

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.4282 OF 2005

Kumar Mahadev Mane.

...Petitioner.

Vs.

Vice President & Managing Director,
Maharashtra State Road Transport
Corporation & Ors.

...Respondents.

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Mr. R. S. Apte with Mr. Mandar Limaye for the Petitioner.

Mr. D. A. Nalawade for Respondent Nos.1 and 2.

Mr. P.I. Khhemani, AGP for Respondent No.3.

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CORAM : A.P. SHAH AND

DR.D.Y.CHANDRACHUD, JJ.

August 2, 2005.

P.C.:

Rule, by consent returnable forthwith. Counsel appearing on behalf of the Respondents waive service. By consent of Counsel and at their request taken up for hearing.

2. The Petitioner joined the services of the Maharashtra State Road Transport Corporation in 1977 as Divisional Traffic Officer and while making an application for the post, stated that he

belongs to the Ramoshi Community. The Corporation had invited applications from candidates belonging to the Backward Classes, including the VJNT category. The Ramoshi community is included in the VJNT category in the State of Maharashtra. The Tahsildar, Walva had issued a certificate to the Petitioner to the effect that he belongs to the Ramoshi community. The certificate, however, mentions that the aforesaid community was a Scheduled Tribe instead of stating that the community was included in the VJNT category. According to the Petitioner, the certificate, apart from adverting to the Ramoshi community, also reflects the serial number of that community (Sr. No.11), in the notification issued by the Government. According to the Petitioner, he had not claimed to belong to a Scheduled Tribe. After his appointment as a Divisional Traffic Officer, the Petitioner was promoted from time to time and was working as a Regional Manager. Upon being called upon by the General Manager on 5th October 2000 to get his Scheduled Tribe status verified by the Caste Scrutiny Committee, the Petitioner is stated to have replied on 10th November 2000 that he did not claim to belong to a Scheduled Tribe and since the

Petitioner belongs to the VJNT category, there was no occasion to send the certificate to the Scrutiny Committee. Moreover, the Petitioner submitted that the applications which were invited by the Corporation for the post of Divisional Traffic Officer, were from persons belonging to the Backward Classes and not exclusively from persons belonging to the Scheduled Tribes.

3. On 6th March 2004, a notice to show cause was issued to the Petitioner to explain as to why proceedings should not be adopted against him. The Petitioner filed a Writ Petition in which an order was passed in terms of Minutes permitting the Petitioner to reply to the notice and directing the Competent Authority to pass a speaking order. The Petitioner submitted his reply on 20th April 2004. The First Respondent thereupon passed an order on 31st May 2004 confirming the order dated 17th March 2004 that was passed terminating the services of the Petitioner.

4. On behalf of the Petitioner, it has been urged that he had never represented himself as belonging to a Scheduled Tribe.

In his application form for seeking employment, the Petitioner, it is submitted, only stated that he belongs to the Backward Class, something which was stated to be factually correct since the Petitioner belongs to the VJNT category. In the present case, it has been submitted that there was absolutely no question of a false representation or for that matter, of the production of a false certificate. The caste certificate specifically mentions the community of Ramoshi, but the issuing authority had erroneously mentioned that the aforesaid community was classified as a Scheduled Tribe. This, it was submitted, was an inadvertent error on the part of the issuing authority and in any event, the Petitioner had not secured employment on the basis that he belongs to a Scheduled Tribe. The Petitioner has stated that applications were invited by the Corporation from candidates belonging to the Backward Class category. The Service Board of the Corporation is stated to have verified the caste of the Petitioner in 1994 and the Petitioner had duly intimated the fact that he belongs to the Ramoshi community. In the circumstances, it has also been urged that the initiation of an enquiry by the Corporation nearly 18

years after the appointment of the Petitioner was unreasonable. Even in the year 2000, when the Petitioner was called upon to produce his caste certificate for scrutiny by a letter dated 5th October 2000, the Petitioner by his reply dated 10th November 2000 had duly clarified that he belongs to the Ramoshi community. On 15th October 2001, the General Manager, approved the carrying out of an amendment in the service book of the Petitioner to the effect that he belongs to the VJNT category. Thereafter, necessary corrections are stated to have been carried out. A communication was also issued on 14th October 2002 by the State Government, duly confirming that the Petitioner had disclosed his caste as being Hindu Ramoshi. In the Seniority List promulgated by the Corporation on 1st January 2004, the category of the Petitioner was mentioned as VJNT namely, as NT-A. In these circumstances, it has been submitted that the action which was adopted by the Corporation to terminate the services of the Petitioner after 28 years of service is arbitrary.

5. We have perused the record of these proceedings and

have heard Counsel appearing on behalf of the contesting parties. The caste certificate which was issued to the Petitioner on 30th July 1975 (Exh.A) specifically refers to the fact that he belongs to the Ramoshi community. The certificate also contains a reference to the Serial number of the community in the resolution issued by the Government. There is no dispute about the fact that the Ramoshi community is listed as a part of the VJNT category. We are inclined to accept the submission of the Petitioner that the error in the caste certificate, in that a reference is made to the Ramoshi community as a Scheduled Tribe, was neither deliberate, nor intentional and there was no misrepresentation by the Petitioner. It has not been disputed before us that applications were invited by the Corporation from persons belonging to the Backward Classes. This is, therefore, not a case involving a willful misrepresentation on the part of the employee. Undoubtedly, where an appointment to a reserved post is obtained on the basis of a fraud or misrepresentation, such an appointment is void at its inception and cannot confer any status upon the holder of the post (**Vishwanath Pilley vs. State of Kerala**, 2004(1) LLN 323) (SC). In

the present case, the Petitioner has all along stated that he belongs to the Ramoshi community, a community which admittedly has been categorised as belonging to the VJNT. In these circumstances, the action that has been adopted against the Petitioner of terminating his services is patently illegal.

6. We, accordingly, allow the petition and set aside the impugned orders dated 17th March 2004, 31st May 2004 and 2nd September 2004. The Petitioner shall be entitled to reinstatement in the post of Regional Manager together with back wages and continuity of service.

Rule is made absolute. There shall be no order as to costs.

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